

EXHIBIT 51

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3

4 JOHN TENNISON,

5 Plaintiff,

6 vs.

Case No. C 04-00574 CW

7 CITY AND COUNTY OF SAN
8 FRANCISCO; SAN FRANCISCO
9 POLICE DEPARTMENT; PRENTICE
10 EARL SANDERS; NAPOLEON HENDRIX;
11 and GEORGE BUTTERWORTH,

12 Defendants.
13 _____/

14 VIDEOTAPED DEPOSITION OF PRENTICE EARL SANDERS

15 Volume I, pages 1 - 229

16 Tuesday, March 22, 2005
17
18

19 Reported by:

20 HEIDI BELTON, CSR #12885, RPR

COPY

21 -----
22 JAN BROWN & ASSOCIATES

23 CERTIFIED SHORTHAND REPORTERS

24 476 Jackson Street, San Francisco, California 94111

25 (415) 981-3498

09:57:24 1 arrested in the Peter Lee case.

09:57:27 2 BY MR. BALOGH:

09:57:28 3 Q. I was just asking during 1989, can you remember
09:57:30 4 any other gang homicides --

09:57:32 5 A. Not off the top of my head. If you have a
09:57:35 6 document, give it to me. I'll -- I can -- it will
09:57:38 7 probably refresh my memory.

09:57:40 8 Q. I don't have a document. I'm asking do you
09:57:42 9 recollect any cases?

09:57:43 10 A. I don't recall off the top of my head 16 years
09:57:45 11 later or so, no.

09:57:56 12 Q. Which officers were involved with you and
09:57:57 13 Inspector Hendrix with conducting the Shannon homicide
09:57:59 14 investigation?

09:58:02 15 MR. QUADRA: Objection. Vague.

09:58:10 16 THE WITNESS: Actually, the entire Potrero
09:58:13 17 station -- I recall it was Southeast station at that
09:58:16 18 time -- all the officers were involved. The plain
09:58:21 19 clothes officers, the Gang Task Force. We were
09:58:25 20 receiving assistance from all of them.

09:58:26 21 BY MR. BALOGH:

09:58:27 22 Q. Who was leading the investigation?

09:58:33 23 A. I was.

09:58:34 24 Q. And were you leading it with Mr. Hendrix acting
09:58:38 25 under your direction, or were you leading it jointly with

10:16:46 1

THE WITNESS: I think since you made it

10:16:48 2

November 1990, no. I was -- I became aware of his --

10:16:53 3

became aware of that tape in May of -- in May of '91 at

10:17:05 4

the -- Mr. Grim was -- Mr. Lerue Grim was doing the new

10:17:14 5

trial motion, and I was working with Mr. Butterworth to

10:17:17 6

oppose that.

10:17:19 7

BY MR. BALOGH:

10:17:19 8

Q. How did you become aware that Mr. Ricard gave a

10:17:23 9

taped confession to Gittens and Lewis in November 1990?

10:17:28 10

A. It was one -- it was a tape that Mr. Butterworth

10:17:32 11

and I listened to to make my declaration to oppose the

10:17:43 12

pretrial motion.

10:17:46 13

Q. How did you become aware --

10:17:47 14

Actually, can you just read my last question

10:17:50 15

back.

10:17:50 16

(Record read.)

10:18:05 17

THE WITNESS: Mr. Butterworth saw me and

10:18:07 18

said -- asked me about the tape. And I had no knowledge

10:18:14 19

of the tape. He then got the tape and called me to his

10:18:21 20

office and -- to help him make out the -- my declaration

10:18:29 21

or at least help him work on the investigation against

10:18:33 22

the new trial motion.

10:18:34 23

BY MR. BALOGH:

10:18:34 24

Q. You said you heard from Mr. Butterworth. He

10:18:36 25

asked you about the tape?

1 10:18:37 1

A. Yes.

10:18:39 2

Q. Where did that conversation take place?

10:18:41 3

A. In his -- in his -- over the phone or in his

10:18:43 4

office. I don't recall which.

10:18:45 5

Q. What did he say to you?

10:18:46 6

A. He asked me did I know about the tape.

10:18:48 7

Q. What did he say exactly, the best of your

10:18:50 8

recollection?

10:18:51 9

A. I don't recall exactly what he said, but he was

10:18:53 10

asking about a tape in which I had no knowledge of the

10:18:57 11

tape -- of a tape -- that Gittens and -- I guess it was

10:19:01 12

Gittens and -- and Lewis? I think those two were the

10:19:07 13

ones. Because they had never talked to me about it.

10:19:10 14

Q. How did Mr. Butterworth describe the tape to

10:19:12 15

you?

10:19:12 16

A. He said it was a taped confession from some guy

10:19:18 17

named -- from LaVista. And that's what -- from Lovinsky

10:19:22 18

or Vista, whatever the hell his name is. And I told him I

10:19:26 19

have no knowledge of a tape like that. And he said -- he

10:19:30 20

called me back later and said he had found -- or had found

10:19:38 21

one and for me to come down and help him follow up on some

10:19:41 22

investigation that was needed.

10:19:42 23

Q. What was your reaction when you had heard that

1 10:19:44 24

someone else had confessed to the Shannon homicide?

10:19:52 25

A. I thought that it was -- it was noncredible from

10:28:36 1 Q. Okay. I'm not asking whether you'd be
10:28:37 2 challenged. My question is, is it a requirement that the
10:28:43 3 Miranda warning be tape-recorded?

10:28:45 4 MR. QUADRA: Objection. Vague and ambiguous.
10:28:46 5 Also as to the term "requirement," if it calls for a
10:28:49 6 legal conclusion, I object on that grounds.

10:28:52 7 You can answer the question to the best of your
10:28:55 8 ability.

10:28:55 9 THE WITNESS: Counsel, in my practice -- in my
10:28:57 10 training and in my studies of doing police work and in
10:29:04 11 doing police work, if I'm going to arrest you and you're
10:29:07 12 my per- -- you're my suspect -- I think it's "person of
10:29:11 13 interest" now -- before I talk to you or take an
10:29:16 14 official statement, I give you a Miranda warning and put
10:29:19 15 it on tape.

10:29:20 16 BY MR. BALOGH:

10:29:20 17 Q. Okay. That's all well and good, but I'm going
10:29:23 18 to keep on asking the same question --

10:29:24 19 A. That's my --

10:29:25 20 Q. -- until I get an answer.

10:29:26 21 Is it a requirement that the issuance of a
10:29:30 22 Miranda warning be tape-recorded?

10:29:32 23 MR. QUADRA: Objection to the term
10:29:32 24 "requirement" as vague and ambiguous.

10:29:35 25 THE WITNESS: In my training I'm trained that

10:41:01 1 Q. At the time you spoke to Mr. Hendrix, had the
10:41:04 2 new trial motion already been denied?

10:41:16 3 A. I don't recall.

10:41:16 4 MR. BALOGH: I'm getting a note from the
10:41:17 5 videographer to take a small break, which makes a lot of
10:41:21 6 sense. So unless anyone objects, we'll take a small
10:41:25 7 break now.

10:41:27 8 THE VIDEOGRAPHER: Thank you. Off the record
10:41:33 9 at 10:41 a.m.

10:42:58 10 (Recess taken from 10:41 a.m. to 10:45 a.m.)

10:53:12 11 THE VIDEOGRAPHER: We're back on the record.

10:53:13 12 The time is 10:53 a.m.

10:53:20 13 BY MR. BALOGH:

10:53:21 14 Q. Let's go back to the time you're sitting with
10:53:23 15 Mr. Butterworth and you've listened to the confession. Is
10:53:25 16 that -- can you orient yourself to that moment in time?

10:53:28 17 A. Yes.

10:53:29 18 Q. Do you remember when that was in relation to the
10:53:30 19 new trial motion?

10:53:36 20 A. We were preparing to oppose the new trial
10:53:43 21 motion. I recall my declaration. We were drafting it.
10:53:54 22 So I don't know -- I don't know whether the new trial
10:53:58 23 motion -- had not, of course, at that time been denied,
10:54:01 24 but it was -- we were preparing to oppose -- oppose it.

10:54:06 25 Q. Had there been a hearing yet on the new trial

10:54:09 1 motion?

10:54:11 2 A. I don't think so.

10:54:12 3 Q. Because Mr. -- withdrawn.

10:54:14 4 You were the investigating officer present at

10:54:16 5 the hearing of the new trial motion; is that correct?

10:54:22 6 A. I don't recall.

10:54:22 7 Q. Were you in court with Mr. Butterworth during

10:54:24 8 the hearing of the new trial motion?

10:54:28 9 A. I don't recall.

10:54:30 10 Q. Did you testify at the hearing of the new trial

10:54:32 11 motion?

10:54:35 12 A. I don't think so. I said a declaration.

10:54:40 13 Q. What did Mr. Butterworth tell you about how he

10:54:43 14 received a copy of the Ricard confession?

10:54:47 15 A. I don't think he did.

10:54:48 16 Q. Did you ask him?

10:54:49 17 A. No.

10:54:51 18 Q. When you had found -- withdrawn.

10:54:54 19 When you heard the confession, you were aware

10:54:56 20 that it was taken in November 1990; is that correct?

10:55:00 21 A. When I heard it, yes.

10:55:01 22 Q. And that's seven months prior to May '91 when

10:55:04 23 you're claiming now that that's when you heard it?

10:55:05 24 A. I heard it in May '91, and it was dated 11 of

10:55:11 25 '90, I believe.

10:59:54 1 Q. And you ultimately provided a declaration to the
10:59:57 2 court as an expert witness on that matter, correct?

10:59:59 3 A. No. I didn't -- I don't think I went as an
11:00:02 4 expert witness on that.

11:00:03 5 Q. You provided --

11:00:04 6 A. That was my regular work.

11:00:05 7 Q. You provided a declaration stating your
11:00:07 8 evaluation of the Ricard confession; is that correct?

11:00:14 9 A. Yes, based on my experience.

11:00:15 10 Q. And you put in the declaration giving the court
11:00:18 11 reasons why the court should reject the Ricard confession,
11:00:22 12 correct?

11:00:23 13 A. As I recall, yes.

11:00:23 14 Q. And you included the piece about your
11:00:25 15 investigation at Big 5 to convince the court of why the
11:00:27 16 court should reject the Ricard confession, right?

11:00:32 17 MR. QUADRA: Objection. Lacks foundation.
11:00:33 18 The document speaks for itself.

11:00:39 19 THE WITNESS: As I recall my declaration --
11:00:41 20 the declaration does speak for itself, but as I recall
11:00:45 21 it -- and as I recall it, there was some items in there
11:00:48 22 that I had talked to a lot of -- I went to Big 5. I
11:00:53 23 informed the court that I had talked to lots of -- taken
11:00:56 24 lots of confessions in my career, and that this one was
11:01:04 25 flawed. And knowing the city, particularly that part of

1 11:01:07 1 the city where the shooting took place -- I knew it very
11:01:12 2 well -- it didn't make -- it didn't make sense the way
11:01:21 3 he had, you know, described it. And those are the
11:01:25 4 couple of items that I can recall.

11:01:26 5 BY MR. BALOGH:

11:01:26 6 Q. I just want to take this piece by piece, though.
11:01:29 7 Can you bear with me?

11:01:30 8 A. I will.

11:01:31 9 Q. In your view, you went to Big 5 to either verify
11:01:35 10 or disprove something Mr. Ricard said; is that right?

11:01:37 11 A. Yes.

11:01:38 12 Q. And based on your investigation of going to Big
11:01:42 13 5 you found facts to disprove part of what Mr. Ricard
11:01:45 14 said; is that correct?

11:01:46 15 A. Yes.

11:01:46 16 MR. QUADRA: Objection to the term
11:01:47 17 "investigation."

11:01:48 18 But you can answer the question.

11:01:50 19 BY MR. BALOGH:

11:01:50 20 Q. Yes?

11:01:51 21 A. Relative to the shotgun shell purchase, yes.

11:01:54 22 Q. And you submitted a declaration to explain to
11:01:58 23 the court the reasons why you believed the confession
1 02:01 24 should be rejected, correct?

11:02:02 25 A. Yes.

11:02:02 1 Q. And one of the reasons you believed the
11:02:04 2 confession should be rejected was your investigation at
11:02:07 3 Big 5, correct?

11:02:09 4 A. Not totally just the investigation at Big 5. I
11:02:11 5 had --

11:02:12 6 Q. One of the reasons.

11:02:14 7 A. One of the reasons.

11:02:15 8 Q. -- was --

11:02:16 9 So I'm going to get the question and restate it
11:02:18 10 so it's clear.

11:02:19 11 One of the reasons you believed Mr. Ricard's
11:02:21 12 confession should be rejected was based on your
11:02:25 13 investigation at Big 5, correct?

11:02:26 14 A. One of them, yes.

11:02:27 15 Q. And you informed the court of that basis to help
11:02:31 16 convince the court to reject the Ricard confession; is
11:02:33 17 that right?

11:02:34 18 MR. QUADRA: Lacks foundation. Calls for
11:02:35 19 speculation. Document speaks for itself.

11:02:37 20 BY MR. BALOGH:

11:02:41 21 Q. You may answer.

11:02:41 22 MR. QUADRA: If you recall.

11:02:43 23 THE WITNESS: As I understand your question,
11:02:45 24 that was part of the flaw in his confession.

11:02:54 25 BY MR. BALOGH:

11:02:54 1 Q. And that --

11:02:56 2 A. That was part of the evidence of the flaw in his
11:02:59 3 confession.

11:03:01 4 Q. And it was important to alert the court to that
11:03:03 5 flaw, correct?

11:03:03 6 A. Yes.

11:03:04 7 MR. QUADRA: Objection. Argumentative.

11:03:05 8 BY MR. BALOGH:

11:03:05 9 Q. Correct?

11:03:08 10 A. Yes.

11:03:17 11 Q. You spoke about you verified -- withdrawn.

11:03:19 12 You compared the route that Mr. Ricard discussed
11:03:24 13 in his confession with the route that eyewitnesses had
11:03:27 14 given to the police; is that correct?

11:03:31 15 A. Yes.

11:03:32 16 Q. And you -- when you made that evaluation, you
11:03:35 17 checked the statements of the neighborhood witnesses who
11:03:39 18 had given statements to the police department regarding
11:03:41 19 what they witnessed on the night of the homicide; is that
11:03:44 20 right?

11:03:44 21 A. Yes.

11:03:44 22 Q. And there was neighborhood witnesses, there
11:03:46 23 was -- one was -- do you remember the name Jeanette
11:03:49 24 Santos?

11:03:50 25 A. I don't remember the name. But if you have --

1 06:00 1 MR. BALOGH: . I'll just -- had -- when you
11:06:02 2 reviewed the statements of independent witnesses, if
11:06:05 3 those statements corroborated Mr. Ricard's description
11:06:08 4 of the chase, you would have felt that was important to
11:06:10 5 tell the court that, correct.

11:06:12 6 MR. QUADRA: Objection. Argumentative.

11:06:17 7 THE WITNESS: If it had been a significant
11:06:20 8 difference, of course I would have told the court.

11:06:22 9 BY MR. BALOGH:

11:06:22 10 Q. And if there was similarities, would you have
11:06:26 11 told the court?

11:06:27 12 MR. QUADRA: Objection. Lacks foundation.
11:06:28 13 Assumes facts not in evidence; namely, that you decided
11:06:30 14 what was told to the court. But go ahead.

11:06:38 15 THE WITNESS: I reviewed the statements of the
11:06:43 16 witnesses. I reviewed the confession. I counted on
11:06:50 17 what I had done, my own experience in the investigation
11:06:58 18 both written, not written. I also drew upon -- drew
11:07:06 19 upon the location of 7-Eleven and the location of the
11:07:15 20 actual shooting. Mr. Ricard's confession to me didn't
11:07:23 21 make sense.

11:07:24 22 BY MR. BALOGH:

11:07:33 23 Q. My question is, though, when you compared it to
11:07:37 24 the eyewitness statements of describing the car chase, did
11:07:41 25 any of the neighborhood witnesses confirm the route

1 10:15 1 A. As I recall now, I believe I had another contact
11:10:19 2 with her. But it wasn't so much about the case, though --
11:10:24 3 this case that we're talking about. It was about her
11:10:26 4 personal business at the time with her boyfriend.

11:10:30 5 Q. Okay. So about this case, you only had one
11:10:32 6 contact with her over the telephone call; is that your
11:10:36 7 testimony?

11:10:36 8 A. No. I had one contact with her in person.

11:10:40 9 Q. It was about this case?

11:10:40 10 A. No, it wasn't about this case. She had called a
11:10:43 11 second time.

11:10:43 12 Q. Okay.

11:10:45 13 A. And we ended up meeting her in, I think, Daly
11:10:50 14 City.

11:10:51 15 Q. Okay.

11:10:52 16 A. And at that time she wanted not so much to
11:10:57 17 discuss this case. She wanted to discuss her boyfriend
11:11:00 18 who was abusing her.

11:11:01 19 Q. Did you talk about -- did you talk about the
11:11:03 20 case, though, when you met her in Daly City?

11:11:08 21 A. Tried to, but she kept going away from it.

11:11:11 22 Q. Did -- was there any substantive conversation
11:11:13 23 about the case?

11:11:14 24 A. No.

11:11:14 25 Q. And when was that contact in Daly City?

11:11:18 1 A. I don't recall. But it was after the phone
11:11:20 2 call. Maybe -- I don't know what time. I don't want to
11:11:23 3 pin myself to a time. But it was after the early -- it
11:11:25 4 was the first call where I didn't know her name. And then
11:11:28 5 the second call. And she -- and I -- we responded to Daly
11:11:37 6 City. And at that time she was concerned about her
11:11:37 7 boyfriend who was abusing her.

11:11:39 8 Q. So you didn't know her name the first time she
11:11:40 9 called?

11:11:41 10 A. No.

11:11:41 11 Q. How did she get your number?

11:11:44 12 A. I'm sorry?

11:11:44 13 Q. How did she get your number?

11:11:46 14 A. The San Francisco Police Department homicide
11:11:48 15 detail is in the book.

11:11:50 16 Q. How did she get your name?

11:11:52 17 A. I had talked to her one other time.

11:11:54 18 Q. No, the first phone call when you didn't know
11:11:56 19 her name.

11:11:57 20 A. She just called and wanted to talk. And I
11:12:00 21 answered the phone. It was late at -- it was late in the
11:12:03 22 evening. And I answered the phone. So we started
11:12:05 23 talking.

11:12:06 24 Q. So just happenstance you picked up the phone at
11:12:09 25 homicide detail and, bang, there's a witness calling about

1 18:48 1 the time you submitted it on behalf of his name?

13:19:02 2 A. I don't recall. However, I'm the only one that
13:19:04 3 initialed it.

13:19:06 4 Q. Would it be -- would it have been your practice
13:19:07 5 in 1989 to have submitted documents bearing the names of
13:19:10 6 other officers without consulting with them first?

13:19:16 7 A. Depends on the circumstances.

13:19:17 8 Q. How about in this circumstance?

13:19:20 9 A. We're both working on the case, and I don't
13:19:22 10 recall whether we discussed it in detail or not. But it
13:19:26 11 was a routine that -- it was a routine practice that in
13:19:29 12 requesting a reward, we would -- it would be something --
13:19:33 13 we may have discussed it, I just don't remember.

13:19:37 14 Q. Was this memorandum -- withdrawn.

13:19:39 15 Did you provide this memorandum to George
13:19:42 16 Butterworth at any point in time?

13:19:43 17 A. Yes. A copy of it was in the file.

13:19:45 18 Q. Was it your file, or was it Mr. Butterworth's
13:19:47 19 file?

13:19:47 20 A. No, it would have been in my file.

13:19:48 21 Q. Okay. My question is, at any point in time did
13:19:51 22 you provide this document to Mr. Butterworth?

13:19:55 23 MR. QUADRA: Vague and ambiguous.

1 19:55 24 You can answer the question.

13:19:58 25 THE WITNESS: When he was provided with the

1 10:00 1 file, this was in the -- this copy was in the file. The
13:20:03 2 one here which is page 2, this would have been the file
13:20:08 3 copy.

13:20:09 4 BY MR. BALOGH:

13:20:09 5 Q. How can you tell that this is the file copy?

13:20:12 6 A. It's noted that it was sent to room 400 on the
13:20:18 7 4th. This copy that's with all of the initials that's
13:20:21 8 page 1 of this Exhibit, 55, it has -- it went through the
13:20:27 9 ranks from the lieutenant up to the chief. So this is the
13:20:32 10 one that would have been approved and come back to let you
13:20:36 11 know that the case had been approved.

13:20:41 12 Q. So -- I'm unclear. Which one of these pages, if
13:20:44 13 any, were in your file?

13:20:53 14 A. The second one.

13:20:53 15 Q. Okay. And why wasn't the first one in your
13:20:53 16 file?

13:20:53 17 A. Well, all of them eventually came to the file.
13:20:55 18 The first copy that goes to the second page of this
13:21:00 19 document would have been a copy that was put in the file
13:21:04 20 to follow up on this one. When this copy came back
13:21:07 21 approved, it would go in right next to them. That's
13:21:10 22 how -- that's how you ended up with it. They both were
13:21:13 23 in -- all three of them -- all three of these copies were
1 21:16 24 in the file (indicating).

13:21:17 25 Q. And your testimony is that -- and how did

1 13:21:20 1 Mr. Butterworth come across these copies?

13:21:22 2 A. Looking in the file.

13:21:23 3 Q. So he had access to the homicide inspectors'

13:21:27 4 file?

13:21:27 5 A. Yes.

13:21:27 6 Q. When did he have access to it?

13:21:30 7 A. Whenever he requested.

13:21:31 8 Q. So unless he requested -- the protocol was he

13:21:35 9 would request to look at your file to see what was in it,

13:21:37 10 and then he could look at that time whenever he wanted to?

13:21:41 11 A. Yes. He could -- or call us and say, "I want to

13:21:44 12 see the Shannon file again. Bring it down." Or, "I'll

13:21:48 13 come up and visit you."

13:21:49 14 Q. So you wouldn't provide him with information

13:21:51 15 that was in the file. It was his responsibility to come

13:21:53 16 to you and look in the file to see what was there; is that

13:21:56 17 right?

13:21:58 18 MR. QUADRA: Objection. Argumentative.

13:21:59 19 Compound. Misstates the evidence.

13:22:01 20 Go ahead.

13:22:02 21 THE WITNESS: You're characterizing it what --

13:22:04 22 that he would have to come down -- actually, his office

13:22:07 23 was downstairs. We would either take it to him, or he

1 13:22:12 24 would come up. So I don't know which -- you know,

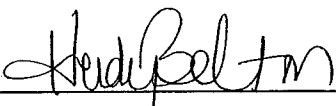
13:22:14 25 whichever was more -- most convenient.

1 STATE OF CALIFORNIA) ss.
2

3 I hereby certify that the deponent in the
4 forgoing deposition was by me duly sworn to testify to
5 tell the truth, the whole truth and nothing but the truth
6 in the within-entitled cause; that said deposition was
7 taken at the time and place therein stated; that the
8 deposition is a true record of the deponent's testimony as
9 reported to the best of my ability by me, a duly certified
10 shorthand reporter and a disinterested person, and was
11 thereafter transcribed under my direction into typewriting
12 by computer.

13 I further certify that I am not interested in
14 the outcome of the said action, nor connected with, nor
15 related to any of the parties in said action, nor to
16 their respective counsel.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 this 1st day of April, 2005.
19

20
21 
22 _____
HEIDI BELTON, CSR #12885, RPR
23
24
25